

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

OTIS J. HILLIARD

Plaintiff,

VS.

TYSON FOODS, INC.

Defendant.

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**CIVIL ACTION NO. 4:10-cv-2388
JURY**

**DEFENDANT TYSON FOODS, INC.'S FIRST
AMENDED DESIGNATION OF EXPERT WITNESSES**

Defendant, Tyson Foods, Inc. ("Tyson") designates the following expert witnesses in accordance with Federal Rule of Civil Procedure 26(a)(2):

RETAINED EXPERTS:

1. Carl L. Benner, P.E.
4001 Austins Estates
Bryan, Texas 77808-7301
(979) 845-6224

Mr. Benner is an electrical engineer associated with Texas A&M University and registered as a Professional Engineer with the State of Texas. A complete copy of the following is attached hereto as ***Exhibit A*** to this designation: (1) a complete statement of all opinions Mr. Benner will express as well as the basis and reasons for them; (2) Mr. Benner's qualifications, including a list of all publications authored in the previous ten years; (3) a list of all other cases in which, during the previous four years, Mr. Benner has testified as an expert at trial or by deposition; and (4) a statement of the compensation to be paid for the study and testimony in the case. Mr. Benner has reviewed the following documents in the present matter:

- (1) Plaintiff's Original Petition
- (2) Defendant's Original Answer
- (3) Plaintiff's Designation of Expert Witnesses
- (4) Plaintiff's Supplemental Designation of Expert Witnesses
- (5) Plaintiff's Responses to Request for Production, Request for Disclosure, Interrogatories and Request for Inspection
- (6) Plaintiff's First Supplemental Responses to Request for Production

- (7) Plaintiff's Supplementation of Discovery Responses – Neuropsychological Exam
- (8) Defendant's Responses to Request for Production and Interrogatories
- (9) Defendant's Responses to Plaintiff's Second Interrogatories
- (10) Defendant's Responses to Plaintiff's Second Request for Production
- (11) Defendant's Documents Produced (Bates Labeled TYS 001 – TYS 302)
- (12) Color Photographs
- (13) Oral Deposition of Otis Hilliard
- (14) Oral Deposition of Enrique Tamez
- (15) Oral Deposition of Kenneth Jones
- (16) Oral Deposition of Daryl Terry
- (17) Oral Deposition of Joe Ray Cepeda
- (18) Employment Records from Precoat Metals
- (19) Employment Records from Express Professionals
- (20) Employment Records from Grocers Supply Company, Inc.
- (21) Employment Records from Kellogg Brown & Root
- (22) Education Records from National Education Center
- (23) Education Records from Houston ISD
- (24) Medical Records from East Houston Regional Medical Center
- (25) Medical Records from St. Luke's Episcopal Hospital
- (26) Medical Records from Dr. Maximo Roth
- (27) Medical Records from Key Health Medical Solutions/Select Physical Medicine
- (28) Medical Records from Jeffrey Reuben MD
- (29) Medical Records from Randolph Evans, MD
- (30) Medical Records from Dr. Lorenzo Bortolotti
- (31) Medical Records from Walgreen's Pharmacy
- (32) Medical Records from Neuropsychological Associates/Shawanda Williams-Anderson, Ph.D.
- (33) Records from the United States Social Security Administration
- (34) Earnings Records from the United States Social Security Administration

Mr. Benner is expected to testify regarding electrical aspects involved in the incident made the basis of this lawsuit. Specifically, Mr. Benner will testify regarding electricity in general, including its effects on the human body, as well as the operation of the machine involved in the incident, energizing of the machine by Hilliard, and the potential of electrical shock from the machine based upon the events described in the testimony of Hilliard. Generally, Mr. Benner is of the opinion that the massager motor and its junction box appear to have been wired properly, including equipment grounding. Mr. Benner also notes that Tyson provides its employees with instruction and training to inspect massager equipment prior to use, and Tyson's policy requires employees to report equipment damage and deficiencies and to cease use of damaged or deficient equipment. Mr. Benner believes that Hilliard should have noticed the physical damage to the massager, and that Hilliard failed to exercise reasonable care in following Tyson's policies. Mr. Benner also notes that Hilliard was provided specialized protective clothing, including rubber boots, which would have made it more likely than not that Hilliard would not have received an electrical shock at all. Tyson refers Plaintiff to the report prepared by Mr. Benner attached hereto as ***Exhibit A*** for further details regarding the opinions of Mr. Benner as well as the basis and reasons for them.

2. Francisco I. Perez, Ph.D.
Francisco I. Perez, Ph.D. & Associates, P.C.
6560 Fannin, Suite 1810
Houston, Texas 77030
(713) 790-1225

Dr. Perez is a clinical neuropsychologist. A complete copy of the following is attached hereto as **Exhibit B** to this designation: (1) a complete statement of all opinions Dr. Perez will express as well as the basis and reasons for them; (2) Dr. Perez's qualifications, including a list of all publications authored in the previous ten years; (3) a list of all other cases in which, during the previous four years, Dr. Perez has testified as an expert at trial or by deposition; and (4) a statement of the compensation to be paid for the study and testimony in the case. Dr. Perez has reviewed the following documents in the present matter:

- (1) Plaintiff's Original Petition
- (2) Defendant's Original Answer
- (3) Plaintiff's Designation of Expert Witnesses
- (4) Plaintiff's Supplemental Designation of Expert Witnesses
- (5) Plaintiff's Responses to Request for Production, Request for Disclosure, Interrogatories and Request for Inspection
- (6) Plaintiff's First Supplemental Responses to Request for Production
- (7) Plaintiff's Supplementation of Discovery Responses – Neuropsychological Exam
- (8) Defendant's Responses to Request for Production and Interrogatories
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- (27) Medical Records from Key Health Medical Solutions/Select Physical Medicine
- (28) Medical Records from Jeffrey Reuben MD
- (29) Medical Records from Randolph Evans, MD
- (30) Medical Records from Dr. Lorenzo Bortolotti

- (31) Medical Records from Walgreen's Pharmacy
- (32) Medical Records from Neuropsychological Associates/Shawanda Williams-Anderson, Ph.D.
- (33) Records from the United States Social Security Administration
- (34) Earnings Records from the United States Social Security Administration

Dr. Perez is expected to testify regarding the current cognitive condition of Hilliard. During his examination, Dr. Perez found Hilliard to exhibit slow motor behavior, diminished and slow speech, and slow performance on most tasks, although these observations appeared to be rather deliberate at times. Although Hilliard cooperated with the examination, Dr. Perez felt that he put forward poor effort. Dr. Perez did review a previous neuropsychological assessment performed by Dr. Williams-Anderson, although he found that Dr. Williams-Anderson did not establish a good baseline and her assessment was rather limited. Upon review of Dr. Williams-Anderson's raw testing data, Dr. Perez determined that she did not conduct any assessment of motivation or effort, and that her very limited assessment does not meet the criteria for a detailed differential diagnostic neuropsychological assessment. Dr. Perez noted significant fluctuations in performance, and noticed poor effort and deliberate slow performance on most tasks Hilliard was asked to perform. Overall, the findings were not consistent with the nature of Hilliard's injuries. Furthermore, Dr. Perez noted numerous other instances contained within records received from the Social Security Administration that Hilliard's performance on multiple past assessments indicate consistently unreliable performance which is not credible. Dr. Perez saw no evidence that Hilliard sustained a neuropsychological or psychological injury at all in the incident made the basis of this lawsuit. Dr. Perez further believes that motivational factors, including secondary gains, are quite prominent in Hilliard's presentation. He also notes a strong component of symptom magnification. Tyson refers Plaintiff to the reports prepared by Dr. Perez attached hereto as **Exhibit B** for further details regarding the opinions of Dr. Perez as well as the basis and reasons for them.

3. Robert D. Cox, M.A., C.R.C., L.P.C.
17424 West Grand Parkway South, Suite 422
Sugar Land, Texas 77479
(281) 343-0999

Mr. Cox is a Rehabilitation and Career Counselor who serves as President of World of Work, Inc. A complete copy of the following is attached hereto as **Exhibit C** to this designation: (1) a complete statement of all opinions Mr. Cox will express as well as the basis and reasons for them; (2) Mr. Cox's qualifications, including a list of all publications authored in the previous ten years; and (3) a list of all other cases in which, during the previous four years, Mr. Cox has testified as an expert at trial or by deposition. Mr. Cox charges a flat rate of \$250 per hour for all activities related to his retention in the present lawsuit. Mr. Cox has reviewed the following documents in the present matter:

- (1) Plaintiff's Original Petition
- (2) Defendant's Original Answer
- (3) Plaintiff's Designation of Expert Witnesses
- (4) Plaintiff's Supplemental Designation of Expert Witnesses

- (5) Plaintiff's Responses to Request for Production, Request for Disclosure, Interrogatories and Request for Inspection
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- (26) Medical Records from Dr. Maximo Roth
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- (29) Medical Records from Randolph Evans, MD
- (30) Medical Records from Dr. Lorenzo Bortolotti
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- (32) Medical Records from Neuropsychological Associates/Shawanda Williams-Anderson, Ph.D.
- (33) Records from the United States Social Security Administration
- (34) Earnings Records from the United States Social Security Administration

Mr. Cox is expected to testify regarding Hilliard's current vocational and career options. Specifically, Mr. Cox will testify regarding careers and vocations which would be available to Hilliard based upon his educational background, experience, and limitations, if any. Mr. Cox will further testify regarding the wage earning capacity associated with the careers and vocations available to Hilliard. Mr. Cox notes that Hilliard has a work history reflecting activities in operating and controlling motorized vehicles, as well as driving automobiles and forklifts, operating overhead cranes, and utilizing machinery utilized in preparing meat products. He also notes that Hilliard has a high school diploma as well as additional training in electronics. Mr. Cox believes that Hilliard could obtain employment in such jobs as a forklift operator, escort vehicle driver, car rental return driver, or delivery driver. Since the wages for these jobs are comparable to what Hilliard has earned in the past, Mr. Cox does not believe Hilliard will suffer any loss of future wage earning capacity upon his return to work. Tyson refers Plaintiff to the

report prepared by Mr. Cox attached hereto as ***Exhibit C*** for further details regarding the opinions of Mr. Cox as well as the basis and reasons for them.

NON-RETAINED EXPERTS:

4. Joe Ray Cepeda
c/o Zach T. Mayer
Kane Russell Coleman & Logan PC
3700 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
(214) 777-4200

Mr. Cepeda is the Complex Safety Manager for Tyson at its Portwall facility in Houston, Texas, where the incident made the basis of this lawsuit occurred. Mr. Cepeda may testify regarding the incident, the reasonableness of safety policies implemented by Tyson, and the effect of Hilliard's failure to follow safety protocols or practices in place. For a more complete statement of the opinions Mr. Cepeda may express as well as the basis and reasons for them, see the Oral Deposition of Joe Ray Cepeda, obtained on August 25, 2011.

5. Merrill P. Anderson, Ph.D.
Atrium 10 Towers
11811 Interstate 10 East, Suite 522
Houston, Texas 77060
(281) 447-7230
6. Lorenzo Bortolotti, M.D.
13125 East Freeway
Houston, Texas 77015
(713) 453-8328
7. Randolph Evans, MD
1200 Binz, Suite 1370
Houston, Texas 77004
(713) 528-0725
8. Andrea Pellegrini, M.D.
505 North Sam Houston Parkway East, Suite 522
Houston, Texas 77060
(786) 683-9811
9. Jeffrey Reuben, M.D.
4126 Southwest Freeway, Suite 700
Houston, Texas 77027
(713) 521-7870

10. Orlando Terneny, MD
2900 Broadway
Houston, Texas 77017
(713) 773-3077
11. Miguel Bastar
Kirk Henderson
City of Houston Fire Department
500 Jefferson, Suite 1500
Houston, Texas 77002
(713) 495-4292
12. Robert S. Case, M.D.
George E. Griffin, M.D.
Denise A. Brown, R.N.
East Houston Medical Center
13111 East Freeway
Houston, Texas 77015
(713) 393-2000
13. Hugo R. Gonzalez, M.D.
Hugo R. Gonzalez & Associates
Industrial and Family Practice Clinic
13125 East Freeway
Houston, Texas 77015
(713) 453-8328
14. Shawanda Williams-Anderson, Ph.D.
Neuropsychological Associates
11250 West Road, Suite I
Houston, Texas 77065
(713) 459-6241
15. Maximo Roth, M.D.
Northshore Occupational Medical Clinic, P.A.
1140 Westmont, Suite 505
Houston, Texas 77015
(713) 453-5454
16. Lily Ann D. Bautista, PT
Lydia V. David, PT
Autumn M. Teesdale, PTA
Select Physical Therapy
15311 Vantage Parkway, Suite 130
Houston, Texas 77032
(281) 442-6861

17. Trien Vu, M.D.
Elan Omessi, M.D.
Abril Padilla, R.N.
St. Luke's Episcopal Hospital
2727 West Holcombe Boulevard
Houston, Texas 77025
(832) 355-7525

These individuals have been identified by Hilliard as the treating medical providers. If called, these individuals would testify regarding their credentials, the medical treatment that was rendered to Hilliard, their findings upon examination of Hilliard, the contents of their examination, as well as any diagnosis or prognosis. The facts known to these experts are contained in their medical records which are already in the possession of the parties.

Respectfully submitted,

KANE RUSSELL COLEMAN & LOGAN PC
1601 Elm Street, Suite 3700
Dallas, Texas 75201
(214) 777-4200 / Fax (214) 777-4299

By: /s/ Zach T. Mayer
Zach T. Mayer
Texas State Bar No. 24013118
zmayer@krcl.com
Brian J. Fisher
Texas State Bar No. 24032178
bfisher@krcl.com

**ATTORNEYS FOR DEFENDANT
TYSON FOODS, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of April, 2012, a true and correct copy of the foregoing has been forward to all counsel of record, as follows.

VIA ECF AND FACSIMILE

Sarnie A. Randle, Jr.
S.A. Randle & Associates, PC
Chase Bank Building
5177 Richmond Ave., Suite 635
Houston, TX 77056

/s/ Zach T. Mayer

Zach T. Mayer